

*The Right of the Citizens of London to elect Sheriffs in their Common-Hall, proved, from the Custom of our Ancestors, from their Charters, History, Antient Acts of Parliament, Judgments and Resolutions of many Learned Judges.*

**I**N Changes and Revolutions that have happen'd in this Nation, this Prerogative or Privilege of chusing Sheriffs has had its Alterations: It was originally in the Freeholders of every County not incorporated, and they chose this great Officer in their *Folk-mote*, which in the Saxon Language, is the Court of the Folk or People, which we now call the *County Court*. My Lord Cook, from

*L. C. J. Cook's  
Instit. Part 2.  
Fol. 558.*

good Authority tells us, That of Antient Time, such Officers or Ministers as were instituted, either for Preservation of the Peace of the County, or for Execution of Justice, (because it concerned all the Subjects of that County, and they had as great Interest in the just and due Exercise of their several Places) were, by force of the King's Writ, in every County chosen, in full or open County, by the Freeholders of that County; the Freeholders, as the Representatives of all the People, chose their Sheriffs: But in Antient Cities, which were Counties incorporated, the Election of their Sheriff was by the Representatives of the Citizens, which were the most substantial Part of the Citizens, and distinguish'd by their Liveries, to which they were called by their several Companies; which Companies were Corporations, and made By-Laws severally in their several Halls, and together at their Common-Hall, antiently called their *Hall-mote*, or *Hall-court*, which

*L. C. J. Cook's  
Jurisdiction of  
Courts, F. 249.*

was and still is, *Conventus Civium in Aula Publica*. And this Convention or publick Meeting in London, was antiently called the *Hall-mote*, or the *Folk-mote*, and is at this Day by Prescription, time out of mind, the Antient *Folk-mote* of London for the chusing of Sheriffs by the Citizens that are of the Livery. This Right and Privilege of the Citizens of London, was taken away by *Will. 1.* called the *Conqueror*; who finding the People generally enrag'd for the loss of their Laws, and had endeavour'd to recover them with their Swords, he pardons those that fought for them, and at *Barkhamstead* receives from the chief of them new Oaths of Fidelity; and himself swears before the Arch-bishop *Lanfrank*, and many of the Nobility, to observe the Antient Laws of the Realm, establish'd by his noble Predecessors, Kings of England; and especially those of *Edward the Confessor*, among which were those of chusing Sheriffs.

This Right and Custom of chusing Sheriffs was afterwards confirmed and restored to the Citizens of London by the Charter of *Hen. 1.* who thereby kept the Crown, tho the younger Brother; and is not only their Right by Grant, but by Purchase too; for they have paid dearly for it when taken away against Law and Justice.

King *Edward the First* had as great need of the Kindness of his Subjects, as his Progenitor; therefore he courted the People in the same manner: And in the 28th Year of his Reign, granted in Parliament, by the Statute of *Articulis super Chartas* to the People, that they should have the Election of Sheriffs in every County. My Lord Cook in his Exposition of this Statute, saith, That though the Words in this Statute be the King's Grant to his

People, that they shall have the Election of Sheriffs, which are likewise the Words of the Charter of *Hen. 1.* yet by the word *Grant*, the People's Right was restored, and they by virtue thereof chose Sheriffs as before the Norman Invasion, and according to their antient Use and Custom.

That the Charter of *Hen. 1.* and the Custom of chusing Sheriffs in London, gave no Right to the Citizens of London to chuse Sheriffs otherwise than by their Representatives in Common-Hall, is plain from the Words of the Charter of *K. John*, which is confirm'd by *Magna Charta*, and many other Statutes; for the Words of that Charter are, That the Citizens of London, and their Heirs, shall make Sheriffs among themselves whom they will, and may move them when they will; and those whom they make, shall present to the Justices of the *Exchequer* of those things which to the said Sheriffwick appertains, whereof they ought to answer us.

To remove Sheriffs must be by some Court, that must, in behalf of the People, call the Sheriffs to an Accompt, and that must be by a Court that by Custom and Prescription have Cognizance of the Faults and Misdemeanours done by those great Officers, for which they move them: and that is the proper Work of a Court, it cannot be by all the People of the whole County incorporated, but is the Work of a *Hall-mote* or *Hall-court*, intrusted by all the Citizens to chuse for them and the King, honest and able Men for Sheriffs, and to present them to the Justices of the *Exchequer*, as they do in their Liveries to this Day, and have so done time out of mind. For the Right of this *Common-hall*, or *Hall-mote*, to elect Sheriffs, there cannot be a better Proof than the By-Law of the 23. *Septemb. 7<sup>o</sup>* and 15<sup>o</sup> *Edw. 4.* which if consider'd, cannot be imagin'd to be By-Laws of the *Common-Council*, but of the *Common-Hall*; for the By-Law of 7 *Edw. 4.* enacts, That the Election of Mayors and Sheriffs shall be only by the *Common-Council*, the Master and Wardens of every Mystery of the City coming in their Liveries, and by other honest Men for that purpose specially summoned. What is hereby enacted more, than that the Master and Wardens of every Mystery shall elect in their *Gowus*? If the *Common Council* were there, it is an Act of the *Commonalty*, not of the *Common-Council*, who had nothing to do with the Matter. But if this were the Act of the *Common-Hall*, called the *Commonalty*, (as it plainly appears to be) who have Power to make By-Laws in that Matter; it is a good By-Law to distinguish the Representatives of the Citizens for chusing Mayors and Sheriffs from others.

The By-Law of 15 *Edw. 4.* enacts, That the Masters and Wardens of the Mysteries of the City, in their Halls, or other Places of the City fit and convenient, associating to them the honest Men of their Mysteries, being clothed in their last Livery, shall go together to the *Guildhall* of the City for the electing of Mayor, &c. and in their last Livery but one, to the Election of the Sheriffs of the City, &c. And that no others besides the honest Men of the *Common-Council* of the City, shall be present at the said Elections. Now I am very confident, that the

Recorder himself will not, under his Hand, publish this to be an Act of the *Common-Council*; for 'tis not credible that the *Common-Council*, who are said to make Laws by Advice of their Recorder, and others learned in the Law, should make a Law, that no others besides the honest Men of the *Common-Council* of the City should be present at such Elections, for that were to repeal the Charters of the City, *Magna Charta*, and all other Acts of Parliament for the Confirming, Granting, and Restoring the Liberties and Privileges of the Citizens, in which they have an Inheritance. For as the Lords and Commons, in Writs of Summons to Parliament, are call'd the *Common-Council* of the Kingdom, and are to advise in Matters of Weight and Difficulty; so is the *Common-Hall* the extraordinary *Common-Council* of all the Citizens of *London*.

These two Laws therefore cannot be Acts of *Common-Council*; they must be Acts of *Common-Hall*, or *Hall-Court*, which to this Purpose are a *Common-Council*, or a Council of the Commons, and call themselves in this Act a *Common-Council*, in the other the *Commonalty* who were in Council assembled, as the Representatives of the Commons, to make By-Laws for them, and call themselves sometimes the *Common-Council* of the City, as they properly are in this Matter; sometimes the *Commonalty*, as the Representatives of the People in Parliament are called, and do call themselves in all Acts of Parliament, the *Commons*, who are but the Representatives of the *Commons*; and are also called, in the Antient Oaths of Coronation established by Parliament, the *Vulgi*, or *Common People*, tho' but their Representatives.

The Use and Custom of chusing Sheriffs, makes this beyond Contradiction; for at this very Day the Masters and Wardens of the Mysteries in the City in their Halls, clothed as aforesaid, go to the Elections of Mayors and Sheriffs, to the *Guildhall*, and there do elect, not as Men of the *Common-Council*, but as a *Hall-mote*, or *Hall-court*; and those of the *Common-Hall*, that are not of the *Common-Council*, meet together as a *Hall-mote*, or *Hall-court*, not as a *Common-Council*.

For the Peace and Quiet of the City, it were to be wish'd that those Acts of *Common-Council* (as they are said to be) had never been printed; they have given just cause to Men to believe, That there are those that against Law and Reason, against Practice and Custom, would take from the Citizens the Election of Mayors and Sheriffs, by their Representatives in *Common-Hall*. They have laid a Foundation, nay they have been scaffolding many Years, by their Acts and Devices; and have had the confidence to disturb and make void Elections by the *Common-Hall*, and have taken away the Rights and Liberties of the *Common-Hall*, on purpose to take Fines, and then to compel the *Common-Hall* to new Elections, a thing not known to our Ancestors. This is not only levying Money at other Times, and in other manner than by Act of Parliament, as was done by the late K. *James*, and is numbred among the Grievances of the Statute of K. *Will.* and Q. *Mary*, but is raising Money without any colour of Law, and yet vindicated in the vilest manner; for Men are publicly forbid to speak of, or mention this Grievance, because the King is beyond-Sea; when in truth a greater Service cannot be to the King, than to prevent these Extravagancies which are against his Coronation-Oath, by which he has promis'd to govern according to the Statutes in

Parliament agreed on, and the Laws and Customs of *England*. The late K. *James* (as it is declared in the first of K. *Will.* and Q. *Mary*) by Ministers employ'd by him, did endeavour to subvert the Laws and Liberties of the Kingdom, Laws for free Elections: As that of *Westminster* 1<sup>st</sup> is endeavoured to be subverted by the *Common-Council*: The Words of the Statute are, For that Elections ought to be free, The King commands, upon great Forfeiture, That no great Man, nor other, by Force, Malice or Menaces, shall disturb free Elections. And my Lord *Cook*, in his Exposition of that Statute, tells us, there were two Mischiefs before the making this Statute. 1. Elections were not duly made. 2. Elections were not freely made: And both these were against the antient Maxim of the Law, *Fiant Electiones rite & libere, sine interruptione aliqua*: For before this Act, in the irregular Reign of H. 3. the Electors had neither their free nor their due Elections; for sometimes by Force, sometimes by Menaces, and sometimes by Malice, the Electors were framed and wrought to make election of Men unworthy, or not eligible, so as their Election was neither due nor free. This Act briefly rehearseth the old Rule of the Common Law, (that Elections ought to be free) wherein both the said Points are included: 1. It must be a due Election; and, 2. It must be a free Election.

This Statute doth enact, That no Man, upon grievous Forfeiture, shall disturb any to make free Elections; and is excellently penned in two respects: First, For that generally it extendeth to all Elections, that is to say, to every Dignity, Office, or Place elective, be it Ecclesiastical or Temporal, of what Kind or Quality soever. Secondly, The Act is penned in the Name of the King, viz. The King commandeth: And therefore the King bindeth himself not to disturb any Electors to make free Election, as in the like Case upon a Statute made in the Reign of the said King; The Act saying, *Rex perpendens, &c.* the same bound the King. Now that Electors might make free and due Elections, without displeasure or fear thereof, by this Act of Parliament, as a sure Defence, the King commandeth the same upon grievous Forfeiture. And this Act extends to all Elections, as well by those that at the making this Act, had Power to make them, as by those whose Power was raised or created since this Act.

The Disturbers of free Elections, he says, are to be punished with grievous Fines, and Imprisonment.

Yet how notoriously was this most excellent Law violated by the very Government of the City of *London*, at the last Election of Sheriffs? What ill and dangerous Example was given to the whole Nation by the Magistrates of the City of *London* at that Election? What open and publick Encouragement to affront and condemn his Majesty's Laws made to prevent Disorders and Tumults? What popular Confusion might have hapned from those whose Rights and Liberties were invaded against Law and Justice; by the Sheriffs denying the Question that was desired to be put, Whether to adhere, or proceed to a new Election, when humbly intreated. And this was done at a time when his Majesty was out of the Realm, and in Arms against a Tyrant, and the Common Enemy of Law and Liberty.



The Common Hall are a Court of great Authority, they have a Jurisdiction by Custom, and have a Prescription and Custom to disfranchise and restore in their Common-Hall or Hall-Court, if the Party disfranchised have committed a Crime that deserves that Punishment; if not, the King may command them to restore him: But no such Writ can be directed to the Common Council, or Mayor and Aldermen, for they cannot take away, nor restore Mens Liberties and Franchises, 'tis against *Magna Charta*.

Every Citizen has a Freehold in the Lands, Liberties and Franchises of his Corporation; and a Disfranchisement by them is a Disseisin and a Destruction against *Magna Charta*, unless it be by the Citizens in Common-Hall, who have that Power by Custom.

If the Mayor of a Corporation shall challenge a Negative Voice by his Prerogative, and to deceive the People shall cause Entries thereof to be made in Books for a Record or Memorial thereof, and pretend to have the Opinions of Men that have been Judges, Attornies General, or Solicitors General to his Majesty or his Predecessors, and shall thereby prevent the good Orders and Laws that may be made to hinder undue and disorderly Elections of Mayor and Sheriffs, this is a good Cause of Disfranchisement by the Common-Hall or Hall-Court: If the Mayor or any of the Magistrates of the City shall alter the antient Oaths of Common Council, Sheriffs, and others, established to prevent the selling of Judges Places, and other Offices, which they are or ought to be sworn not to sell, but dispose of freely without Bribe or Reward: 'Tis a good Cause of Disfranchisement. If any great Officer of a Corporation shall claim a Prerogative to make that Man a Sheriff he drinks to, this is an Invasion of the Rights of the Citizens, against his Duty, and against Law, and a good Cause of Disfranchisement.

This Hall-Court ought to take care that their Charter be not forfeited; they ought by their By-Laws to prevent and to punish Incroachments on their Liberties against *Magna Charta*, under Colour and Pretence of Fines and Forfeitures: The raising of more than 150000*l.* on Pretence of choosing Sheriffs within 44 Years last past, is an Abuse of the Trust reposed in them by Kings and Parliaments: 'Tis a scandalous Imposition against the Right of the Subject, and against Law and Justice.

What ill Manners is it then modestly to vindicate the Right of the Common-Hall to elect Sheriffs, and to preserve the Rights and Liberties of the Citizens of London in their Representatives, according to Use and Custom in all times, since the Charter of *Will. I.* and *Hen. I.*? Or what Disservice to his Majesty? Cook in his 2*d* *Instit.* tells us, he cannot pass a Resolution of all the Judges of *England*, in 34*th* *Hen. 6.* on this Occasion.

Upon a Reference by the King's Privy Council to Sir John Fortescue, and Sir John Priscot, Chief Justices, and to the rest of the Justices, concerning a Sheriff constituted by the King himself, it is thus in the Council-Book recorded, 3 *Martii, ann. 34. Hen. 6.* as followeth, in these Words:

Upon a Demand that my Lord Chancellor made to the Chief Judges, and to the Remnant of the Judges, how that the King's Laws, neither Justice, might not be executed in *Lincolnshire*, because there

was no Sheriff there, and that the King by his Letters Patents under his great Seal, had deputed certain Men for to have be Sheriffs there, what them seemed should be done in this Behalf? so that the King's Laws and Justice might be executed in that Shire, as executed in other Shires in *England*.

The 2 Chief Justices the same Day came unto my Lords of the King's Council in the Sterred-Chamber, and upon the abovesaid Demand said, that them seemed, and so it seemed unto the Remnant of the Judges, that the King did an Error, when that he made another Person Sheriff of *Lincolnshire* than was chosen, and presented unto his Highness, after the Effect of the Statute in such Behalf made.

In the Reign of *Richard II.* this was a Controversy between the King and the People, who under the Conduct of the Barons came to London, where it was ended by the Submission of that unfortunate Prince; and one of the Articles of Deprivation against him was, that he displaced divers Sheriffs lawfully elected, and put in their Places ill Men, thereby subverting the Law, contrary to his Oath and Honour. The Common-Council of London, as Freemen, have sworn to maintain the Franchises and Liberties of the City, yet they are the very Men that make By-Laws to take away this Liberty and Franchise, which is a Trust lodg'd in the Common-Hall by many Kings and Parliaments.

The Power that a Common-Council-man has is as one of the Livery, he cannot elect unless of the Livery; all that are not so are commanded to withdraw by the Crier, before the Election, on pain of Imprisonment; yet when he is elected, he (as is pretended) has a Power in Common-Council to disfranchise his Corporation.

'Tis adjudged in Cook's 5*th* *Rep.* the Chamberlain of London's Case, that the Common-Council of London cannot make Laws against the Laws and Statutes of the Realm, and that such Laws made by them are void: But Laws made by them, or other Assemblies of Men that are not repugnant to Law and Reason, are good: 'Tis there resolved, that Laws made by them *pro privato lucro* are void: 'Tis there adjudged, that they may make Laws for good Order and Government; the Government there intended is the Government by Law established by Parliament, not a Government by Officers chose by them contrary to Charters and Statutes; such Laws are made against the Government of the City, and are void.

'Twas resolved by all the Judges in *England*, in the Case of *Dungannon* in *Ireland*, that only Corporations are capable to take such Inheritances. A Common-Council, it seems, can give what it cannot take, for a Common-Council is no Corporation. *Trin. 32 Eliz.* In an Action of false Imprisonment in the Common Pleas, brought by *Clarke* against *Gape*, the Defendant justified the Imprisonment, for that King *Edward VI.* had incorporated *St. Albans* by the Name of Mayor, &c. and granted to them to make Ordinances, and shews that Queen *Elizabeth* appointed the Term to be held there, by reason of which they, with the Consent of the Plaintiff and other Burgesses, assailed every Inhabitant towards the erecting Courts there, and ordained, that if any refused Paiment, he should be imprisoned; and for that the Plaintiff being a Burgess refused Paiment, he as Mayor justified; and this was adjudged no Plea, for that this by-Law is against

against *Magna Charta*, and the Consent of the Plaintiff could not alter the Law.

If a Common-Council may take away this Liberty and Franchise of choosing Sheriffs, why may they not take away their Liberty and Franchise of using Trades in the City? The Law has secured the one as much as the other; and the doing the latter succeeded very ill with a Mayor and Aldermen of *London* in the Reign of *Hen. 8.* Justice *Crooke* in the first part of his Reports, fol. 33. saith, That *Periam* Justice said, he had seen a Precedent in the time of *K. Hen. 8.* where a Citizen of *London* sued a Citizen of *London* in the Common Bench, and the Mayor and Aldermen would have him put the Matter to Compromise, which he refused; whereupon they did disfranchise him, and he shewed this Matter to the Court, and thereupon they directed their Writ to the Mayor, &c. to restore him to his Franchise, and they assented a Fine of an hundred Marks upon every of them that were Parties to the Disfranchisement, which they payed, as appeareth by the Record, and the Citizen was restored to his Franchise.

The Question ask'd the Judges in the 40th and 41st of *Eliz.* was, Whether the antient and usual Elections of the Mayors, Bayliffs, Provofts, &c. by a certain select Number of the Principal of the Commonalty, or of the Burgesses, commonly called the Common Council, or by such other Name, and not in general by all the Commonalty or Burgesses, nor by so many of them as would come to the Election, were good in Law? Forasmuch as by the Words of the Charters the Election shall be indefinitely by the Commonalty, or by the Burgesses, which is as much as to say, by all the Commonalty, or all the Burgesses, &c.

To which all those learned Judges gave this Answer, That antient and usual Elections of Officers of Corporations, by a certain select Number of the Principal of the Commonalty by Prescription, and not by all the Commonalty in general, were good Elections, and well warranted by their Charters and By-Laws also. This Resolution of the Judges justifies the Custom, Usage and Practice of the Common-Hall to a tittle. Had they considered this very Case, and heard Arguments on both sides, and decided the Matter for the Common-Hall against the Common-Council, they could not have adjudged more plainly and fully, for the manner of electing Sheriffs of *London*, by the Common-Hall.

Acts of Common-Council had no Authority to order or regulate Elections, unless confirmed by Common-Hall, before the Prerogatives of Lord Mayors was set on Horse-back, and the Liberties of the City trodden under foot: An Evil as old as *Solomon*; for antiently such By-Laws were confirmed by the Common-Hall, as appears in their antient Books and Memorials in their *Guildhall*.

In the 18th *Edw. II.* one *John Causton* had been chosen Sheriff at the usual time: he not appearing upon a Proclamation, the Aldermen and Commons were summoned to be at *Guildhall* the *Michaelmas*-Day next following; on which Day *Causton* was disfranchised and put out of his Aldermanship: But the Common-Hall did not confine themselves to this only; they made Ordinances in their *Guildhall* concerning the electing Common-Council-men in the several Wards, as appears by their antient

Books, in the Reigns of *Edw. III.* and *Rich. II.*

These antient Charters, Rights, Customs and Prescriptions of the City of *London* have been restored and confirmed to the Citizens of *London* in all Ages. The City of *London* is *Cor Regni*, therefore its Charters, its antient Liberties and Customs were not only granted and sold to them by Kings, but the Purchase confirmed by many Parliaments: *Civitas Londin. habeat omnes libertates suas antiquas*, are the Words of *Magna Charta*, which my Lord *Cook* says hath been antiently thus expounded, Let the City of *London* have their Franchises to which they are inheritable by lawful Title, by the Gift and Confirmations of Kings, which they have not abused and forfeited, and which are not repugnant to Law.

The Statute of 14 *Edw. III.* says, The City of *London* shall have all their Franchises. The Statute *de Tallagio non concedendo* ordains, that all Clerks and Laymen of *England* shall have their Laws, Liberties, and free Customs, as largely and wholly as they have used to have them when they had them best; and that all Statutes made, and Customs brought in, contrary to them, shall be frustrate and void for evermore.

The Statute of this present King and the late Queen *Mary*, restores to the Mayor, Commonalty and Citizens, all their Rights, Gifts, Charters, Grants, Liberties, Privileges, Customs, Usages, Constitutions and Prescriptions, and all to no Purpose: The two Acts of Common-Council of the 7th and 15th *Edw. 4.* like the two mighty Idols *Bell* and the *Dragon*, devour all our Charters, Rights, Liberties, Customs, &c. and all those Statutes that give and restore them. *Quid juvat Statuta?*

Pride and Ambition is the Cause of this Controversy; they contend for Prerogatives, which makes Men mad, and they catch at Shadows, and beat and wound themselves with their own Weapons.

I cannot forget that old Exposition of *Magna Charta*, which says, the Citizens shall have their Franchises to which they are inheritable; that good old Gentleman is unmannerly, for we are now told he should have said, If the Common-Council please.

I, for my part, bemoan the Condition of poor Mr. *Wills*; for notwithstanding the Advice of some of the Judges, as is pretended, yet if the present Case of the Common-Hall, lately printed, be true, and they be sworn that be not elected, that poor Gentleman stands in need of the Prayers of his Congregation. The Consequence of this idle Controversy must be sad and fatal to him, and all that shall fall under that Calamity. How shall such Men act that are no Officers? Men not duly elected have no Authority, they are in Danger of Suits, they can neither be Officers nor Judges: Here are greater Difficulties like to be than when the 2 Chief Justices, Sir *John Fortescue* and Sir *John Priscott*, were advised with by his then Majesty's Privy Council. The City will bewail this Confusion and Disorder: This Calamity will be far greater than that of *Lincolnshire*, and greater Mischiefs will ensue than are foreseen, which they must answer for that are the Occasion of these undue Elections. But for that poor Gentleman, I say, God send him a good Deliverance.